

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1080 of 1999

in

SPECIAL CIVIL APPLICATION No 2397 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
Yes
2. To be referred to the Reporter or not? Yes :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
5. Whether it is to be circulated to the Civil Judge? : NO
No

STATE OF GUJARAT

Versus

AMARSINHBHAI BHAILALBHAI CHAUDHARY

Appearance:

M SN SHELAT, ADDL. ADVOCATE GENERAL with
MS MANISHA LAVKUMAR AGP for Appellant.

MR KG VAKHARIA with MR TUSHAR MEHTA
for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.M.KAPADIA

Date of decision: 17/09/1999

C.A.V. JUDGEMENT

(Per B.C.Patel, J.)

RULE. Mr.Tushar Mehta, learned advocate waives service of Rule for Respondent No.1.

2. The State of Gujarat through its Chief Secretary to the Government, being aggrieved by the order dated 09th July, 1999 passed in Special Civil Application No.2397 of 1999, has preferred this appeal. Respondent No.1 preferred Special Civil Application No.1026 of 1998 challenging the appointment of Lokayukta and the said matter is pending before the Division Bench. The respondents received a notice dated 05th February, 1999 from the Registrar of the Lokayukta in Form No.'E'. Without going to the details suffice it to say that an application dated 25th February, 1999 was preferred before His Excellency the Governor of Gujarat under sub-Section (3) of Section 19 of the Gujarat Lokayukta Act, 1986 (hereinafter referred to as the Act). Respondent No.1 received the reply dated 09th March, 1999 from the Principal Secretary to His Excellency the Governor of Gujarat stating that " The State Government had submitted the proposal to entrust the inquiry in the instant case to the Lokayukta for approval of His Excellency the Governor and the same was approved by His Excellency the Governor of Gujarat. The order granting permission under Section 19 (4) of the said Act was passed in the relevant file of the Government submitted to His Excellency." The petitioner appears to have applied for recalling the order under Section 19 (3) of the Act vide application dated 03rd March, 1999. It transpires that His Excellency the Governor of Gujarat was pleased to reject the said application. Respondent No.1 has challenged the decision/order purported to have been passed by His Excellency the Governor of Gujarat on 17th January, 1997 and/or 28th January, 1997 directing investigation against respondent No.1 under sub-section (3) of Section 19 of the Act. Respondent No.1 also challenged the order dated 15th March, 1999 passed by His Excellency the Governor of Gujarat. Section 19 of the Act reads as under:

"Sec.19 (1) The Governor may, by notification published in the Official Gazette and after consultation with the Lokayukta confer on the Lokayukta such additional functions in relation to the eradication of corruption as may be specified in the notification.

(2) The Governor may, by order in writing and after consultation with the Lokayukta confer on the Lokayukta such powers of a supervisory nature over agencies, authorities or officers set up, constituted or appointed by the State Government for the eradication of corruption as may be specified in the order.

(3) The Governor may, by order in writing and subject to such conditions and limitations as may be specified in the order, require the Lokayukta to investigate any action (being action in respect of which a complaint may be made under this Act to the Lokayukta) and notwithstanding anything contained in this Act, the Lokayukta shall comply with such order.

(4) When any additional functions are conferred on the Lokayukta under sub-section (1) or when the Lokayukta is to investigate any action under sub-section (3), the Lokayukta shall exercise the same powers and discharge the same functions as he would in the case of any investigation made on a complaint involving an allegation, and the provisions of this Act shall apply accordingly."

3. From the text of the order passed by the learned Single Judge, it transpires that the learned Additional Advocate General was agreeable to the order that the investigation before the Lokayukta may proceed but his report may be kept in a sealed cover and may not be submitted to the competent authority under the Act. It seems that the State is aggrieved as the learned Single Judge has granted interim relief restraining the Lokayukta from holding investigation. Relying upon the averments made by the original petitioner as regards bias of the Lokayukta, our attention was drawn to Section 8 of the Act which reads as under:

"Sec.8 (1) The Lokayukta shall not investigate any action,-

(a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850 with his prior concurrence, or

(b) in respect of a matter which has been referred for inquiry under the Commissions of

Inquiry Act, 1952 on his recommendation or with his prior concurrence or by the State Government under the proviso to sub-section (2) of section 7, or

(c) in respect of a matter which has been inquired into under the enactments referred to in clauses (a) and (b) or has been finally decided by a competent court.

(2) The Lokayukta shall not investigate any complaint which is excluded from his jurisdiction by virtue of a notification issued under section 20.

(3) The Lokayukta shall not inquire into any matter concerning any person if he has any bias in respect of such matter or person and if any dispute arises in this behalf, the Governor shall, on an application made by the party aggrieved, obtain in such manner as may be prescribed, the opinion of the Chief Justice of the High Court and decide the dispute in conformity with such opinion.

(4) The Lokayukta shall not inquire into any complaint if the complaint is made after the expiry of five years from the date on which the action mentioned in such complaint is alleged to have been taken."

4. Mr.Shelat, Additional Advocate General put emphasis on sub-section (3) of section 8 of the Act and submitted that the public functionary, if apprehends that the Lokayukta has any bias against him, then the public functionary is required to apply as per sub-section (3) of section 8 of the Act. Looking to Section 8 of the Act, it clearly appears that the provisions are self-contained and provide for the procedure for approaching His Excellency the Governor if there is any dispute under sub-section (3) of Section 8 of the Act and thereafter the dispute is to be decided in accordance with the provisions contained in sub-section (3) of Section 8 of the Act. The application dated 03rd March, 1999, Annexure 'L', as submitted by the learned Counsel Mr.Vakharia, has been rejected by an order dated 15th March, 1999 vide Annexure-M and therefore no useful purpose will be served by approaching His Excellency the Governor of Gujarat again under sub-section (3) of Section 8 of the Act.

5. Reading the application, it appears that the said application cannot be construed as an application under Section 8 (3) of the Act. In our view, when the Act provides procedure, then, in that case, the procedure required under the Act is to be followed. Considering the provision made for procedure to be followed for a grievance, the public functionary was required to follow the procedure laid down in Section 8 (3) of the Act. Reading the application submitted to His Excellency the Governor it is very clear that the application was not under Section 8 (3) of the Act.

6. The learned Counsel appearing for the original petitioner submitted that, in that eventuality, the petitioner will make an application under Section 8 (3) of the Act to His Excellency the Governor of Gujarat. In light of the view which we have taken, it would be open for the original petitioner to move an application under Section 8 (3) of the Act to His Excellency the Governor of Gujarat. It goes without saying that, if such an application is made, the investigation by the Lokayukta shall be subject to the provisions of Section 8 (3) of the Act.

7. It is in view of the above, the interim order passed by the learned Single Judge stands modified so as to permit the investigation to proceed. However, in view of the fact that the learned Additional Advocate General fairly stated before the learned Single Judge that the investigation may proceed but the Lokayukt may not submit Report, it will be just and proper to direct that the report shall be kept in a sealed cover and shall not be submitted to the competent authority under the Act. If the petitioner makes an application under Section 8 (3) of the Act, the investigation shall be subject to the provisions of Section 8 (3) of the Act.

8. Appeal stands allowed accordingly in the terms and directions as mentioned hereinabove. Rule is made absolute.

(KMG Thilake)

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